

(1969) 08 PAT CK 0019

In the Patna High Court

Case No : Tax Case No. 73 of 1966 with C.W.J.C. No. 104 of 1967

Umesh Narain Puri

APPELLANT

Vs

The Controller of Estate Duty, B. and O.

RESPONDENT

Date of Decision : 12-08-1969

Acts Referred:

Estate Duty Act, 1953 — Section 22, 6

Citation : AIR 1970 Patna 283 : (1970) 75 ITR 310 : (1969) 2 PLJR 563

Hon'ble Judges : S.C. Misra, C.J.; S. Wasiuddin, J

Bench : Division Bench

Advocate : Tarkeshwar Prasad, Shambhu Sharan, Rameshwar Prasad II and Manindra Nath Verma, for the Appellant; Ugra Singh, for the Respondent

Judgement

Misra, C.J.—This reference u/s 64(1) of the Estate Duty Act, 1953, relates to the estate of Mahanth Surendra Nath Puri. He died on the 24th of June, 1954. The Assistant Controller of Estate Duty, Patna, finding that no accountable person filed any return, prepared a draft computation of the estate duty leviable in respect of the estate of the deceased Mahanth and called upon the accountable person to file objection, if any. Before passing final order of assessment on the proposed lines, he took the particulars of the properties of the deceased Mahanth from the agricultural Income Tax records. The reply given by the accountable person was that Mahanth Surendra Nath Puri was a mere trustee in respect of the estate held in his hand and the proposed valuations were not correct. Since he did not produce any material in support of his claim, several adjournments were granted by the Assistant Controller to the accountable person to produce necessary documents in support of the claim of the person concerned, but nothing was brought on record and accordingly assessment was finalised by the Assistant Controller ex parte on the 19th of June, 1958. He held that the deceased Mahanth was not a mere trustee of the properties of the Math as was alleged before him but was the sole proprietor thereof. He passed the order of assessment accordingly.

2. The accountable person Mahanth Umesh Narain Puri preferred an appeal from the order of assessment before the Central Board of Revenue in which It was contended that Mahanth Surendra Nath Puri was merely a trustee of the properties of the Math, hence no estate duty could be levied on the properties of the Math of which the deceased was in charge. At the time of hearing of the appeal, however, no document was produced in support of this contention. He applied for adjournment but that prayer was refused. From the materials on record, the Board came to the conclusion that the status of the Mahanth was already declared by the District Judge of Gaya in Title Suit No. 1 of 1932. In that suit it was held that according to the terms of the grant in favour of the Mahanth, the income from the properties was to be spent by the Mahanth for the time being and his disciples for their maintenance and in return of it they were directed to pray for the eternal duration of the empire of the Moghal emperor who was the grantor. It was found further by the learned District Judge that there was no indication of any public trust impressed on the properties and, therefore, it was merely a private trust for the enjoyment of its income by the holder and for the time being the right to enjoy the Asthal properties was available to the Mahanth generation after generation. Since there was no indication that the holder of the properties had any particular duties to be carried out in order to become entitled to enjoy the income, and as it was also found by the Assistant Controller that the deceased had in fact alienated some of the properties during his lifetime, the Board proceeded upon the finding arrived at by the learned District Judge, on the factum of sale of the properties by the deceased Mahanth, and held that the properties of the Asthal were held by the deceased as beneficial owner and as soon as he died, his beneficial enjoyment changed hands; As to the particulars of the property and the value thereof, it was held that the materials relied upon by the Assistant Controller were sufficient to support his contention but he actually reduced the value of the zamindari compensation due from the government and the estimated cash in hand which he had received at the time of his death.

3. The appeal of the accountable person Mahanth Umesh Narain Puri having failed prayer was made on his behalf to refer a number of questions of law for the opinion of the High Court. None of the questions formulated on behalf of the Mahanth were accepted as legitimate by the Board, but the following question has been referred to:

"Whether, on the facts and in the circumstances of the case, the properties comprised in the estate known as Madra Math properties have rightly been assessed to Estate Duty under the provisions of the Estate Duty Act, 1953?"

4. The main question argued by learned Counsel for parties is whether the properties belonging to Madra Math were the personal properties of the deceased Mahanth or they were held by him as a trustee public or private. Mr. Tarkeshwar Prasad appearing for the accountable person has urged that estate duty is not chargeable in this case if it can be shown that the properties held by the

deceased Mahanth were trust properties, whether it was a public trust or a private trust-The finding of the Assistant Controller as also the Central Board of Revenue that the properties under consideration were the personal properties of the Mahanth cannot be sustained even with reference to the document on which reliance was placed by them. His first contention is that the properties appertaining to Madra Math must be construed as public trust. All the relevant considerations with regard to the character of the Math and the properties belonging to it were discussed in the judgment of the District Judge of Gaya in Title Suit No. 1 of 1932, u/s 92 of the Code of Civil Procedure. That was a case in which the suit was brought by the plaintiff u/s 92 of the CPC for a declaration that neither of the two persons who claimed to act as Mahanth of this Math after the death of Mahanth Tokh Narain Puri, viz. Prem Narain Puri or Raghunath Puri, who was accepted to be a Mahanth as a result of litigation between Prem Narain Puri and Raghunath Puri and others, could be regarded as properly appointed Mahanth and whoever of them might be in possession of the Math should be removed from the office and a new Mahanth might be appointed. There were also other incidental reliefs which it is not necessary to mention. In that connection elaborate evidence was led by the parties as to the character of the Math and all the properties held by it.

The person to whom the properties were granted by Emperor Shah Alam II as "madad mash" was Mahanth Ajodhya Puri by a farman which was marked as exhibit F in that case. Reference was also made in that connection to the note made on the back of the farman of the application made by Mahant Ajodhya Puri, Reliance was also placed upon the other contemporary documents. The learned District Judge overruled the contention of the plaintiff in that case that Madra Math was a public trust and as such the case that the plaintiff as a sanyasi was entitled to maintenance and hospitality at the cost of the Math was negatived. The Assistant Controller and the Central Board of Revenue in particular has laid much stress upon this document in order to determine the character of the properties and to counter the contention put forward on behalf of the accountable person that it was a public trust.

Thus, it may well be taken that the authority dealing with the facts has accepted the judgment of the learned District Judge as reliable in regard to the nature of the properties. Our attention has been drawn, therefore, to this document by learned Counsel both for the accountable person and also for the department. The finding in that case recorded at page 17 of the paper book was as follows:

"I, therefore, do not accept the contention of the defence that the property is the personal property of defendant No. 3. The property belongs to the Math and in that sense it is the subject of trust. But it does not follow from this that the trust is a public one. Whether it is a public or not has to be gathered from the Farman."

The contention raised on behalf of the department, and upon which the Central Board of Revenue proceeded that the properties were personal properties, is definitely inconsistent with the finding of the learned District Judge. If the Central

Board of Revenue had proceeded on the footing that it would not accept the finding of the learned District Judge because it found evidence of dealing with the properties by some of the holders of the office of the Mahanth by way of alienations, different considerations might arise. As it is, however, the Board has proceeded upon the ground that the finding of the learned District Judge of Gaya could be taken to be conclusive for the purpose of determining the nature of the properties. That document, however, goes against the view that these properties were personal properties of the Mahanth. If anything, while negating the case of the plaintiff in that litigation that Madra Math was a public trust, and while also negating the case of the defendant that the properties were the personal properties of the Mahanth, the learned District Judge also came to the following conclusion at page 17 of the paper book:

"Even if I accept the translation of the plaintiffs, however, it does not help their case. All it means is that the property granted is to be inalienable. This condition is quite consistent with a grant creating a private trust in favour of the Math. It is not a necessary inference that the grant was intended to constitute a public trust."

At page 19, it is further observed:

"This agreement, however, is quite consistent with the property being the property of the Math and forming a trust of a private character. The only duty which can be regarded as being of a public nature is that mentioned in para 4 namely, to look after visitors, who come to the Math. This is merely mentioned as an old custom of the Math and though this may be a duty imposed upon a Mahanth of the Math, it would not make the trust a public trust unless members of the public visiting the Math were given the right to demand lodging and proper treatment."

Thus, the learned District Judge accepted the case neither of the plaintiff that the Math was a public Math together with all its properties, nor of the defendant of the suit that the properties were the personal properties of the occupant of the office of the Mahanth. It is true, no doubt, that thereafter some properties are alleged to have been sold by the successors-in-office of the Mahanth of the Asthal upon which reliance has been placed by Mr. Ugra Singh for the department, but in view of the conclusion by the Central Board of Revenue itself that the judgment of the learned District Judge was the basis for its conclusion, the Court has to proceed upon a construction of this document. Anything else done by a Mahanth subsequently might be a violation of his obligation as a Mahanth to preserve the properties or it might be justified by a legal necessity which it is difficult in the present proceeding to pronounce upon. Thus, the only basis on which the correct principle of law can be applied in this case cannot but be that Madra Math properties were trust properties and they were of the category of a private trust,

5. Mr. Ugra Singh has urged on the authority of S.C. Sreemanavikraman Raja,

Zamorin Rajah of Kozhikode and Another Vs. Controller of Estate Duty, Madras and Another, and Assistant Controller of Estate Duty Vs. Balkrishna Menon, that the Assistant Controller was not bound by the decision of the Civil Court; but that is wholly immaterial in view of the basis on which the Central Board of Revenue itself has proceeded i.e., the judgment of the learned District Judge itself being made the basis for determining the character of the properties. In that view of the matter, it is not even necessary to decide further whether this judgment would be a judgment in rem or a judgment in personam in connection with which Zoraster and Co. Vs. The Commissioner of Income Tax, Delhi, Ajmer, Rajasthan and Madhya Bharat (Now) Madhya Pradesh, has been cited. Nor is it necessary to refer to several other decisions such as DWARKADAS BHIMJI AND OTHERS Vs. COMMISSIONER OF Income Tax, (CENTRAL), BOMBAY., . Earl Cowley v. Commr. of Inland Revenue 1899 A. C. 198 and Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, in support of the contention that if no object of the trust was set out in the farman and no compellable duty were set out for performance of the donee that could not amount to a trust in the sense in which exemption could be demanded on behalf of the accountable person who would succeed to the office.

6. Mr. Tarkeshwar Prasad has contended that if the properties were not personal properties of the Mahanth as held by the learned District Judge, then in any case the Madra Math must be taken to be a private trust and even then after the death of Mahanth Surendra Puri, or for the matter of that after the death of any Mahanth, the question of the application of Estate Duty Act cannot arise because there is no property that passes on the death of the Mahanth to his successor. The present Math is not even a mouroosi Math where the senior-most chela of the deceased Mahanth succeeds as a matter of course to the office of the Mahanth, but it is a Math where the electing system prevails and there is no knowing as to who would succeed unless some one is duly elected to it according to the custom of the Asthal. Such a case is one in which it must be held that the provisions of sections 22 and 23 of the Act can be invoked Section 22 of the Act lays down:

"22. Property held by the deceased as trustee:--

Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was bona fide assumed by the beneficiary at least (two years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise: Provided that a house or part thereof held by the deceased as trustee for another person under a disposition made by him in favour of the spouse, son, daughter, brother or sister, shall not be deemed to be included in the property

passing on the death of the deceased by reason only of the residence therein of the deceased except where a right of residence therein is reserved or secured directly or indirectly to the deceased under the relevant disposition or under any collateral disposition."

In the case of a private trust also the trustee holds the property on behalf of the idol or a particular institution, as the case may be, and in this also, therefore, title to the properties vests in the institution being the Math and not in the Mahanth although, as in all such cases, he is in the sole charge of the management of the properties of the Math. Reference has also been made to Section 23 which lays down that in the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest. It is contended that as soon as the Mahanth dies his interest, whatever its nature may be, comes to an end and only when another person is duly elected to the office does his interest come into existence. Hence, it is clearly a case governed by Section 23. Reliance has also been placed in support of it on the decision of the Madras High Court in *S.C. Sreemanavikraman Raja, Zamorin Rajah of Kozhikode and Another Vs. Controller of Estate Duty, Madras and Another*, of which lays down that in case of a private trust the principle of estate duty cannot arise. In my opinion, the argument of Mr. Prasad is well founded.

Apart from these two sections, attention may also be drawn to Section 2 which defines "property passing on the death" which alone would be excisable to estate duty under this Act. Section 6 stands thus:

"6. Property within disposing capacity: Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death."

It is clear, therefore, that where the property is not within the disposing capacity of the deceased holder of an estate, no estate duty can be levied upon such property in the hand of any one who succeeds to such property. The learned District Judge of Gaya himself held that the properties belonging to Madra Math were properties of private trust and as such vested in the Math and no Mahanth had disposing capacity over such properties. If anyone took any such step by way of alienating the properties, it would be regarded as breach of trust and not justifying the inference that the character of the properties was different and that the properties should be treated as personal properties of the holder. Such a conclusion would be entirely illogical and unsustainable. In that view of the matter, the duty levied in respect of Madra Math properties cannot be upheld as legal and valid. In view of this conclusion, it is not necessary for me to consider a further contention raised by learned Counsel for the accountable person that the duty actually assessed was arbitrary, without taking into consideration any material on record which the assessing authorities were bound to do even in any

ex parte assessment. Ex parte assessment also was not justified in the peculiar circumstances of the case. If, I had come to a different conclusion in regard to the liability of the successor Mahanth to estate duty holding that he could not claim exemption, I would have considered this contention with reference to the following cases which have been brought to our notice:

AIR 1933 396 (Oudh) . (1944) 12 ITR 370; Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, ; (1954) 25 ITR 216; State of Kerala Vs. C. Velukutty, ; SURAJMAL CHAMPALAL Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., ; Madupalli Anjaneyulu and Co. Vs. The State of Andhra, ; Vuddagiri Kanakaraju & Sons v. Andhra State (1955) 7 STC 442 (AP).

7. In the result, therefore, the order of estate duty passed in this case must be quashed as unsustainable. The application is accordingly allowed and the reference is answered in the negative.

Wasiuddin, J.

8. I agree.